

FEB 14 2006

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESUS MOJICA-SEGURA,

Defendant - Appellant.

No. 04-50545

D.C. No. CR-04-00341-RGK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Submitted February 10, 2006**
Pasadena, California

Before: BEEZER, T.G. NELSON, and GOULD, Circuit Judges.

Jesus Mojica-Segura appeals his 46-month sentence imposed after his guilty-plea conviction on one count of being an illegal alien found in the United States

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

following deportation in violation of 8 U.S.C. § 1326(a) and (b)(2). We have jurisdiction pursuant to 28 U.S.C. § 1291.

Mojica-Segura preserved his claim in the district court that his sentence violated *United States v. Booker*, 543 U.S. 220 (2005), when he challenged the constitutionality of the Sentencing Guidelines in his sentencing memorandum. *See United States v. Ameline*, 409 F.3d 1073, 1078 n. 1 (9th Cir. 2005) (en banc). Accordingly, we vacate the sentence and remand for resentencing consistent with *Booker*. *United States v. Kortgaard*, 425 F.3d 602, 610- 11 (9th Cir. 2005).¹

SENTENCE VACATED and REMANDED.

¹We do not reach the issue of whether the district court erred in imposing a condition of supervised release that required Mojica-Segura to report to the Probation Office within 72 hours of any reentry into the United States because this condition is part of the now-vacated sentence. *See United States v. Joyce*, 357 F.3d 921, 924 (9th Cir. 2004); 18 U.S.C. § 3583(a).